

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

|  |   |                       |
|--|---|-----------------------|
| MICHAEL RYAN PEACOCK,                    | ) |                       |
| Individually and on behalf of all others | ) |                       |
| similarly situated,                      | ) |                       |
|  | ) |                       |
| Plaintiffs,                              | ) |                       |
|  | ) |                       |
| v.                                       | ) | Civil Action File No. |
|  | ) | 1:16-CV-04353-MHC     |
| YAKIM MANASSEH JORDAN,                   | ) |                       |
|  | ) |                       |
| Defendant.                               | ) |                       |
| _____                                    | ) |                       |

**JOINT MOTION TO OPEN DEFAULT**

COME NOW, Plaintiff and Defendant and file this Joint Motion to Open Default showing the Court as follows:

1. Defendant has retained counsel and is prepared to defend this action on the merits in this Court without further delay.
2. Counsel for both parties have conferred about the facts surrounding service of the Summons and Complaint.
3. There are disputed issues of fact surrounding the proper residence of the Defendant, the identity of the persons receiving substituted service, and the residency of those persons receiving substituted service.
4. The parties wish to avoid litigating over whether service was properly perfected against the Defendant.

5. Wherefore, in exchange for Plaintiff agreeing to withdraw his motion for Default Judgment, Defendant agrees to: (i) accept and waive service of the Summons and Complaint; (ii) waive the defense of improper venue; (iii) waive any argument that the litigation of this action should be stayed or delayed for any reason; and (iv) pay \$3,100.00 to Plaintiff to compensate Plaintiff for costs and attorney's fees that Plaintiff has incurred in connection with his effort to serve Defendant.
6. The parties now ask for an order:
  - a. Vacating the Clerk's entry of default and directing Plaintiff to withdraw his Motion for Default Judgment and ordering Defendant to answer or otherwise respond to the Complaint by April 21, 2017;
  - b. Requiring Defendant to file a response to Plaintiff's Motion for Class Certification [Doc. 11] on or before May 8, 2017.
  - c. Ordering Defendant to deliver the sum of \$3,100.00 to Plaintiff within 10 days of the entry of the Order granting this Joint Motion; and

d. Acknowledging Defendant's waiver of service and of any  
objection to venue in this Court.

Respectfully submitted this 13<sup>th</sup> day of April, 2017.

NEY, HOFFECKER PEACOCK &  
HAYLE, LLC

/s/ Michael Ryan Peacock  
Michael Ryan Peacock  
Georgia Bar No. 001356

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*Pro se Plaintiff and proposed  
Counsel for [Uncertified] Class*

BEDARD LAW GROUP, P.C.

/s/ John H. Bedard, Jr.  
John H. Bedard, Jr.  
Georgia Bar No. 043473

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*Counsel for the Defendant*

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|   | ) |                       |
| Defendant.                                | ) |                       |
| <hr style="width: 40%; margin-left: 0;"/> | ) |                       |

**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2017, I electronically filed this Notice of Joint Motion to Open Default using the CM/ECF system which will automatically send email notification of such filing to the following attorney of record:

Michael Ryan Peacock  
[Michael@nhphlaw.com](mailto:Michael@nhphlaw.com)

Respectfully submitted,

/s/ John H. Bedard, Jr.  
John H. Bedard, Jr.  
Georgia Bar No. 043473